

## **REMARKS**

Applicants have carefully considered the matters raised by the Examiner in the Outstanding Office Action but remain of the opinion that the patentable subject matter is present. Applicants respectfully request reconsideration of the Examiner's position based on the above amendments to the claims and the following remarks.

Currently under prosecution are claims 6-9. Claim 6 and 8 are independent claims and both claim 6 and 8 have been amended herein. Claim 6 and 8 have been amended to recite the encapsulated flavor is added to the food during formulation of the food rather than during preparation. Support for the term formulation can be found on page 4, second full paragraph. Claim 6 has further been amended to recite that the food is frozen so as to form the frozen food. Support for this amendment can be found on page 4, third full paragraph. Claim 8 has also been amended to recite that the food is subject to a step of microwave cooking, and support for this can be found on page 4, third full paragraph.

Returning to the Office Action, claims 6-9 have been rejected based on Anonymous, Furata, et al. and Reineccius, et al. As the Examiner pointed out, each one of these references teaches encapsulating a flavor with a cyclodextrin.

What these references fail to teach is the steps of adding the encapsulated flavor to a food during formulation; and either: (1) freezing the food, or (2) microwave cooking the food. Claim 6 recites that the encapsulated flavor is added during formulation of a food and that this formulated food is frozen. Claim 8 recites that the encapsulated flavor is added during formulation of the food and then the food is cooked by microwave. Neither one of the references teach nor suggest adding an encapsulated flavor to a food and then either freezing that food or microwave cooking that food.

Based on the file it is only the applicants that teach the use of an encapsulated flavor in a specific food.

Furthermore, applicants invention is not directed to just adding an encapsulated flavor to food but rather to stabilizing a flavor in a microwave cooked food or stabilizing a flavor in a frozen food, which has been subject to frozen thawing and long-term storage.

Thus applicants vehemently disagree with the Examiner's characterization that the difference between the prior art and the claims is the addition of an encapsulated flavor to a prepared food, because applicant's claims specifically recite not only the addition of the encapsulated flavor to a food but also either the cooking or the freezing of the food.

In the Office Action the Examiner states that the applicants' test results are no more than what one of skill in the art would expect. Applicants disagree with this and point to the Declaration. The point of the Declaration is to demonstrate that flavor encapsulated with cyclodextrin is far superior to conventional materials used in conjunction with flavors. The test results compare conventional Gum Arabic, maltodextrin and cyclodextrin. As brought out in paragraphs 18 and 19 of the Declaration, one of skill in the art considers the results to be surprising and unexpected, because they would not expect a flavor

encapsulated with cyclodextrin to out perform Gum Arabic and maltodextrin.

Thus, the Declaration demonstrates that the cyclodextrin does do more than what one of skill in the art would expect.

The tables in the Declaration are statistical analysis, which support applicants' conclusions. As is normal in the food industry, taste panels are employed and based on those taste panels, data is accumulated. That data is of a numerical nature and the numbers from the table clearly are a statistical analysis. The results of that statistical analysis demonstrate that cyclodextrin encapsulated flavors outperforms other conventional products used with flavors, namely Gum Arabic and maltodextrin. Thus, the facts in this application show that encapsulated flavor is surprising and unexpected and one of skill in the art has attested to this fact.

The Examiner has cited *In re Jones*, 1941 CD 686, for the proposition that observation of a beneficial result from an old process is not the basis for patentability. The claims *In re Jones* were directed to a method wherein bicarbonates or carbonates were added to a well

drilling mud. The art cited by the Examiner taught the addition of carbonates and bicarbonates to a well drilling mud. Applicants invention was directed to the fact that bicarbonates and carbonates when present in the well drilling mud reduced the filtration rate of the mud. The prior art taught the use of the bicarbonates and carbonates for increasing the viscosity of the mud. Thus, the process steps in the prior art and the application were identical.

The instant application is clearly distinguishable from the facts of In re Jones because we have no art that teaches (1) the addition of encapsulated flavors to foods; (2) freezing the food; or (3) microwaving the food. The art cited by the Examiner simply teaches encapsulating flavors. The references do not teach or suggest any specific uses for those flavors, let alone the specific use of stabilizing flavors in microwaved foods or frozen foods. Applicants claims are specific to a food that has been cooked by microwave or a food that has been frozen.

Respectfully, applicants have shown through their Declaration that one of skill in the art would not expect cyclodextrin to outperform Gum Arabic and maltodextrin in a frozen food or microwave food.

In view of the foregoing it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested.

Should any extensions of time or fees be necessary in order to maintain this application in pending condition, appropriate requests are hereby made and authorization is given to debit account #02-2275.

Respectfully submitted,  
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Enclosures